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Role Of Three Consultants In Award Of Emergency School Assistance Program/Community Groups Grants

B-164031(1)

Office of Education
Department of Health, Education,
and Welfare

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

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SEPT. 21, 1973



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164031(1)

The Honorable Thomas F. Eagleton
United States Senate

Dear Senator Eagleton:

This is our report on our inquiry into an Office of Education, Department of Health, Education, and Welfare, employee's claims of irregularities in the use of consultants by the Office of Education's Emergency School Assistance Program/Community Groups office and in the activities of three former program consultants. We made our review pursuant to your request of June 13, 1972.

Most of the information in the report was obtained through discussions with officials of the Office of Education, institutional grantees, and consulting firms, and the three consultants whose activities were questioned. These parties were given an opportunity to review the contents of this report, to the extent appropriate to their respective areas of knowledge, and their comments thereon are recognized in the report.

As agreed with your office, we are sending copies of this report to the Secretary of Health, Education, and Welfare and to the Attorney General. We do not plan to distribute this report further unless you agree or publicly announce its contents.

We want to direct your attention, however, to the fact that this report contains recommendations to the Secretary of Health, Education, and Welfare. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's

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first request for appropriations made more than 60 days after the date of the report. Your release of this report will enable us to send it to the four committees for the purpose of setting in motion the requirements of section 236.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Axtell". The signature is written in a cursive, flowing style with a large initial "J".

Comptroller General
of the United States

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ABBREVIATIONS

ESAP/CG	Emergency School Assistance Program/Community Groups
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
OE	Office of Education

COMPTROLLER GENERAL'S REPORT TO
THE HONORABLE THOMAS F. EAGLETON
UNITED STATES SENATOR

ROLE OF THREE CONSULTANTS IN
AWARD OF EMERGENCY SCHOOL ASSISTANCE
PROGRAM/COMMUNITY GROUPS GRANTS
Office of Education
Department of Health, Education,
and Welfare B-164031(1)

D I G E S T

WHY THE REVIEW WAS MADE

At the request of Senator Eagleton, GAO inquired into claims by an employee of the Office of Education (OE) that

--OE's Emergency School Assistance Program/Community Groups (ESAP/CG) office improperly used consultants and

--three former program consultants used their positions to influence grant awards to certain educational institutions and subsequent contract awards by these institutions to consulting firms in which the three consultants supposedly had an interest.

FINDINGS AND CONCLUSIONS

The three consultants were in a position where, because of either weak or indifferent program management, they could and likely did exert strong, and in some instances questionable, influence in soliciting, reviewing and approving grant applications, and suggesting that grantees use consultative services.

Basic situation

The Emergency School Assistance Program, administered by OE, pro-

vided grants to school districts and to public and private nonprofit agencies, organizations, and institutions (community groups) to defray the costs of meeting special problems arising from elementary and secondary school desegregation.

The program was established in August 1970, under six legislative authorities, with an initial \$75 million appropriation for fiscal year 1971, of which OE reserved \$7.14 million for grants to community groups.

Use of consultants

ESAP/CG used consultants to perform program operating functions contrary to the Federal Personnel Manual, which provides that they should be used only as advisors.

The former ESAP/CG Director appointed one consultant to the position of Acting Deputy Director with responsibility for, among other things, convening and chairing panels which reviewed and recommended funding of grant applications. Other consultants sat on review panels from time to time.

The consultants in some instances solicited and helped to write or rewrite grant applications which they, as principal review panelists, were in a position to review and recommend for funding. They also helped some

grantees revise their proposals to include sizable amounts for consultative services, and it appears that they influenced grantees' decisions about the need for the services and choice of firms to supply them.

In each of the six cases GAO examined, either the firm chosen was affiliated with one of the consultants or an officer of the firm was a friend, acquaintance, business associate, or former business associate of one of the consultants. (See p. 5.)

Some grantees in preparing grant applications, proposals, and budgets--including related revisions--dealt almost exclusively with consultants. Several grantees said that they viewed the Acting Deputy Director (consultant) as the ESAP/CG Director. Some grantees relied on the Acting Deputy Director's stated or implied approval and took steps which they later had to cancel for lack of authority. (See p. 5.)

Problems in program administration

The ESAP/CG office either did not prepare or did not keep pertinent records of its panel reviews, including meeting dates, attendees, and matters considered and proposed. (See p. 20.)

Payroll errors resulted in net overpayments to consultants of \$1,784. The Department of Health, Education, and Welfare (HEW) sent letters to the consultants in July 1973 requesting them to return the overpayments. None of the consultants had made a refund as of August 27, 1973. (See p. 21.)

RECOMMENDATIONS

HEW should direct OE to emphasize to program managers that:

- When consultants are engaged they be used only in the capacity for which they were hired, as required by the Federal Personnel Manual, and not be placed in positions where they can directly control program administration.
- Records of review panel meetings on ESAP/CG applications submitted for funding consideration should be prepared and maintained so that the bases for the panel's recommendations will be readily available to HEW program managers or others authorized to review and evaluate the conduct of the program. (See p. 22.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

HEW concurred in GAO's recommendations and described actions taken or planned to implement them. (See p. 23.)

CHAPTER 1

INTRODUCTION

At the request of Senator Thomas F. Eagleton, we inquired into claims by an employee of the Office of Education (OE) concerning the use and activities of three former consultants employed in connection with the Emergency School Assistance Program/Community Groups (ESAP/CG) office. The major claim was that the three consultants--Messrs. Paul A. Walsh, Henry G. Scharles, and Timothy F. Regan--whom ESAP/CG employed during 1971, used their positions to influence grant awards to certain educational institutions and subsequent contract awards by these institutions to consulting firms in which the consultants were said to have an interest. Other claims were that proposal review procedures were inadequate and not documented and that the consultants received compensation to which they were not entitled.

The Emergency School Assistance Program¹ provided grants to school districts and to public and private nonprofit agencies, organizations, or institutions (community groups) to defray the costs of meeting special problems arising from elementary and secondary school desegregation. The program was established in August 1970, under six legislative authorities, with an initial \$75 million appropriation for fiscal year 1971, of which OE reserved \$7.14 million for grants to community groups. An additional \$75 million was appropriated for the program in fiscal year 1972.

Administration of the community groups program, originally in the Center for Community Planning, Office of the Secretary, Health, Education, and Welfare (HEW), was separate from the school districts program. Shortly after ESAP was established HEW reassigned responsibility for the community groups program to OE, which created ESAP/CG to administer the program. ESAP/CG was to process, review, and recommend for funding grant applications from community groups. The regular staff of ESAP/CG included a director, four program officers, and two secretaries. After operating for several months, ESAP/CG supplemented its regular staff by retaining five consultants, three of whom--Walsh, Scharles, and Regan--were mentioned prominently in the ESAP/CG employee's claims.

¹In June 1972 the Emergency School Aid Act (title VII of Public Law 92-318) was enacted as a successor to ESAP.

SCOPE OF REVIEW

Our review was limited to inquiries into the validity of the ESAP/CG employee's claims. Although the claims involved 12 grants, our inquiries were limited to the 6 grants related to the most serious charges. The grantees were Florida Technological University, Prairie View A&M College, Southern University & A&M College, Savannah State College, Atlanta University, and Millersville State College. These grants were made during 1971 and generally were for 1 year.

The review included discussions with HEW officials, the three consultants, officials of the six educational institutions, and officials of four consulting firms with which the institutions had contracted for services. We also examined pertinent HEW and institutional records on grant awards and subsequent contract awards by the institutions. In many instances these records were inadequate for review purposes. Neither the consultants nor the consulting firms had records, of any consequence, relating to events involved in the claims.

CHAPTER 2

HIRING, USING, AND PAYING CONSULTANTS

We believe that the three consultants, because of either weak or indifferent program management, were in a position where they could and likely did exert strong, and in some instances questionable, influence in soliciting, reviewing and approving grant applications, and suggesting that grantees use consultative services.

OE hired consultants to supplement ESAP/CG's regular staff; ESAP/CG used them to perform operating functions contrary to the Federal Personnel Manual, which provides that they should be used only as advisors. The former ESAP/CG Director appointed Walsh as Acting Deputy Director with responsibility for, among other things, convening and chairing panels which reviewed and recommended funding of grant applications. Other consultants sat on review panels from time to time.

The consultants in some instances solicited and helped to write or rewrite grant applications which they, as principal review panelists, were in a position to review and recommend for funding. They also helped some grantees revise their proposals to include sizable amounts for consultative services, and it appears that they influenced grantees' decisions about the need for such services and the choice of firms to supply them. In each of the six cases we examined, either the firm chosen was affiliated with one of the consultants or an officer of the firm was a friend, acquaintance, business associate or former business associate of one of the consultants.

Some grantees in preparing grant applications, proposals, and budgets--including related revisions--dealt almost exclusively with the consultants. Several grantees said that they viewed Walsh as the ESAP/CG Director. Some grantees relied on Walsh's stated or implied approval and took steps which they later had to cancel for lack of authority.

Other problems involved inadequate recordkeeping and payroll overpayments. ESAP/CG either did not prepare or did not keep pertinent records of its panel reviews, including meeting dates, attendees, and matters considered and proposed.

In our visits to institutional grantees, firms providing consulting services under contract with institutions, and the three consultants, we found few records relevant to the questions raised by the ESAP/CG employee. Most of the information contained in this report, therefore, came from interviews, and, in some instances, we could not resolve conflicting statements by different interviewees.

Payroll errors resulted in net overpayments to consultants of \$1,784. HEW sent letters to the consultants in July 1973 requesting them to return the overpayments. None of the consultants had made a refund as of August 27, 1973.

HIRING CONSULTANTS

If authorized by an appropriation or other statute, 5 U.S.C. 3109 permits the head of an agency to employ consultants on a temporary or intermittent basis.

Before approving such an appointment, OE requires a clear statement of services the consultant is expected to provide. The statement made in this regard by ESAP/CG for each of the five consultants it employed was essentially as follows.

"To assist Emergency School Assistance Program/Community Group Staff in the identification, design, development, and implementation of a comprehensive in-service training program. To facilitate an organizational framework for the participation of 120 diverse organizations in the ESAP Program for community groups."

In addition, the consultants were to render advice to the Government on a detailed plan for (1) monitoring and evaluating proposals and (2) providing necessary technical assistance to grantees.

The former ESAP/CG Director told us that, during the early program period, he was under considerable pressure from his superiors to get the money out to community groups, but that they refused to allow him to hire more people to supplement his staff, which he described as too small and inexperienced to cope with the workload. He said that they did permit him, however, to hire and use consultants as additional staff to get the job done.

The records showed that OE authorized ESAP/CG to appoint five consultants on an intermittent basis for 1 year. It appointed one consultant in December 1970; Paul A. Walsh, Henry G. Scharles, and Timothy F. Regan in January 1971; and another consultant in February 1971. After he had been with the program about 6 months, Walsh was given a temporary appointment as a grade GS-14, step 6. The consultants other than Walsh, Scharles, and Regan were mentioned only briefly in the claims by the ESAP/CG employee, and our review did not involve their activities.

USING CONSULTANTS

A consultant, according to chapter 304 of the Federal Personnel Manual, is to advise, that is, give views or opinions on Government problems or questions, not to perform or supervise an agency's operations. Despite this limitation, the former ESAP/CG Director assigned consultants to duties which went beyond this advisory role.

On February 1, 1971, he appointed Walsh as ESAP/CG Acting Deputy Director, with responsibilities for program coordination, budget control, technical assistance, and training. Scharles' responsibilities included planning, coordinating, and conducting training workshops for ESAP/CG grantees; Regan served in general administrative duties; and all three helped prospective grantees, primarily educational institutions, prepare proposals for submission to ESAP/CG. Walsh was also empowered by the Director to convene and chair panels which considered and recommended for funding applications from grantees. Scharles and Regan sat on such panels from time to time.

Consultants solicited proposals from institutions

Walsh said that the former ESAP/CG Director instructed the consultants to solicit proposals from some institutions, particularly black colleges and universities.

Officials of several institutions said they submitted an application to ESAP/CG after one of the consultants called or visited the school. Florida Technological University officials said that Walsh, whom they thought was an ESAP/CG program officer, told them about ESAP in a meeting arranged at the Miami airport. They added that Walsh told them the university was selected because ESAP/CG wanted a Florida school to participate in the program. Later OE awarded the university a grant of \$154,879 for 1 year, beginning April 1, 1971. According to the university, it originally submitted an application for \$191,813 on January 18, 1971, and OE revised it to \$154,879. According to OE, however, it has no record of receiving an application from the university for \$191,813.

The Director of the Center for School and Community Services, Atlanta University, said that Scharles telephoned

him to ask if the university, which had experience with ESAP, was interested in a training grant. As a result the university submitted an application and OE awarded it a grant of \$60,000 in November 1971.

Millersville State College officials told us that Walsh visited the college on February 17, 1971, and suggested that they consider a proposal for developing a visual aid presentation on desegregation in a Pennsylvania community. They said that after the suggestion Walsh helped them write a proposal. Walsh, however, denied helping the school write a proposal. On April 29, 1971, OE approved a \$27,676 grant to the college for 1 year, beginning May 1, 1971.

Consultants helped grantees write
or rewrite proposals

Walsh said that some institutions submitted unacceptable proposals and therefore could not be considered for funding. He added that in some instances consultants assisted these institutions in rewriting marginal or unacceptable proposals. Scharles said that he worked with and helped prospective grantees but did so only as compatible with his assignment from OE. He pointed out, however, that the guidance he received was not clear and distinct.

Florida Technological University officials said that Walsh furnished them guidance in preparing the school's original proposal.

The president of Prairie View A&M said that his letter of inquiry to OE about ESAP resulted in a meeting in January 1971 between school officials and Walsh and Scharles. The school applied for a grant of \$158,487 on January 25, 1971, but school officials said that Walsh told them the amount would have to be reduced. A school official said that Scharles later visited the school in mid-February 1971 and helped it revise its budget. OE awarded Prairie View a grant of \$140,000 for 1 year, beginning March 1, 1971.

Southern University in November 1970 requested a grant of \$120,987, but in December it submitted an amended application for nearly double that amount. University officials said that in January 1971 Walsh suggested that they revise the project budget to include an amount for consultative

services. OE awarded the school a grant of \$223,000 for 1 year, beginning March 1, 1971.

Savannah State College submitted a proposal and application during the latter part of 1970 for \$60,000. In January 1971, however, the college notified Walsh that it was revising its application to request a larger grant of \$110,000. The letter referred to two conversations that a college official had with Walsh.

Regan told us that, on instructions of the ESAP/CG Director, he visited the college and revised its proposal to justify the increased budget. OE travel records indicate that Regan made the visit in March 1971. The revised proposal, approved on June 23, 1971, included an amount for consultative services. Regan said that he also rewrote proposals for South Carolina State, Virginia State, and Bethune-Cookman Colleges.

According to an Atlanta University official, Scharles prepared the university's initial proposal and budget for conducting training workshops but the final proposal and budget, which contained no substantial changes, were prepared in the official's office. The official also said that he negotiated the final budget with the HEW contracting office in Atlanta.

Revised budgets generally included
sizable amounts for consultative services

The following table shows for each of the grantees included in our review original and revised total budget amounts and amounts allocated for the contractual consultative services.

<u>School</u>	<u>Original budget</u>		<u>Revised budget</u>	
	<u>Total</u>	<u>Consultative services</u>	<u>Total</u>	<u>Consultative services</u>
Florida Technological	\$154,879	\$10,000	\$154,879	\$42,000
Prairie View A&M	158,487	1,500	140,000	42,000
Southern University and A&M College	120,987	1,200	223,000	45,000
Savannah State	60,000	-	110,000	24,759
Atlanta University	60,000	-	60,000	11,300
Millersville State	24,970	-	27,676	4,250

Florida Technological University

The university awarded a contract for technical assistance to Technical Research Associates, Inc., of Los Altos, California. The president of the firm said he was a former business associate of both Walsh and Regan.

University officials said that Walsh suggested the use of an outside consultant and recommended Technical Research Associates and two other firms which the officials could not identify. Walsh denied to us that he recommended Technical Research Associates, or any other firm, saying he normally referred grantees to a minority business list or to the appropriate HEW regional contracts office for assistance in selecting contractors.

The general terms and conditions of ESAP grants permit a grantee to enter into contracts for part of the services to be provided under its grant but require that any proposed contract be submitted to the HEW grants officer for written approval before the grantee enters into the contract.

On April 10, 1971, the university submitted to Walsh a copy of a proposed contract (purchase order) with Technical Research Associates. Walsh, in an undated letter received by the university on April 23, advised that contracts

were permissible under ESAP. According to the university, this letter was then confirmed by a telephone call from a university official to Walsh during which Walsh stated that the contract was approved and that he would notify the HEW contracts office in Atlanta. The university was therefore apparently led to believe that Walsh would secure the contract office's approval and issued a purchase order to Technical Research Associates for \$42,000 on April 29, 1971. The contract was never received in the Atlanta contracts office for approval.

The president of Technical Research Associates, who operates four consulting firms, told us that he learned of ESAP grants to Florida Technological University and Prairie View A&M in March 1971 during a visit with Walsh and the ESAP/CG Director in Washington, D.C. He said that shortly thereafter he visited the university and negotiated the technical assistance contract. He also said that he was acquainted with Walsh and Regan--he and Walsh having worked for the same firm at one time, and he and Regan having worked for each other on various consulting projects during their 10-year acquaintance.

Walsh told us, as did the president of Technical Research Associates, that he was not in any way associated with any of the president's consulting firms. Regan worked on the university's project about 20 days for Technical Research Associates but, according to Regan, not during the time he worked for ESAP/CG. We could not verify the correctness of this statement because the president of the firm said that he had no records pertaining to his contract with the university.

At the time of our review, OE was withholding about \$24,000 of the university's grant. In a letter dated March 9, 1972, the HEW grants officer in Atlanta notified the university that it had not sought his approval of the contract with Technical Research Associates and that, pending receipt of certain information regarding the contract, further payments under the grant were being suspended. The requested information was forwarded on March 17, and on March 30 the grants officer wrote to the university advising that neither he nor the Washington program personnel felt the university's answers were wholly satisfactory and explaining why. Accordingly, the grants officer stated that approval of the

contract was being withheld and recommended that the university make no further payments under the contract.

University officials said that OE was not justified in withholding funds, contending that they acted in good faith on the belief that OE had approved the contract. As of July 25, 1973, the university had received no further elaboration on the status of the withholding decision.

Prairie View A&M

This school also contracted with Technical Research Associates for technical assistance. The contract, in all respects including tasks to be performed, was identical to the Florida Technological University contract.

School officials said that, in a January 1971 meeting with Scharles and Walsh, the latter suggested using an outside consultant but did not recommend a particular firm. During April 1971 the school sought approval of the proposed contract from Walsh and HEW's regional contracting officer in Dallas. (The president of Technical Research Associates had visited the school in March to negotiate the contract.) In his reply to the school, Walsh stated simply that sub-contracts were permissible on ESAP projects. The regional contracting officer apparently approved the contract because the notification of grant award authorized a change in Prairie View's project budget to permit \$42,000 in consultant services.

The school withheld Technical Research Associates' final payment of \$10,500 because, according to a school official (1) Technical Research Associates had not accomplished the objectives of the contract and (2) OE had raised questions about the propriety of the contract. This official said that the school was under the impression that Walsh, who the school believed was the ESAP/CG Director, had approved the contract.

The president of Technical Research Associates maintained that he had satisfied all objectives of the contract. He said OE was causing the school to withhold final payment as a form of harrassment against him. He wrote to his congressman on several occasions and to the President of the United States protesting OE's action. The issue was unresolved as of December 1972.

Southern University and A&M College

This school awarded a technical assistance contract for \$44,987 to Essential Resources, Incorporated, Washington, D.C. The first page of the contract is dated May 31, 1971. Scharles is listed in the articles of incorporation of Essential Resources as an officer of the company.

The ESAP project director at the school said he and Walsh had talked on the telephone a number of times about the need for technical assistance on the school's grant and about a firm to provide the assistance. He said that he wanted a Baton Rouge firm, whereas Walsh wanted a firm from outside Louisiana. He said that Walsh finally told him that OE (not otherwise identified) had decided on a Washington, D.C., firm (not otherwise identified) and that the firm would be in touch with the school. Walsh denied having made this statement.

The school's project director told us that sometime later Essential Resources sent a proposed contract to the school but that, because the work tasks described in the document were quite different from those he and Walsh had previously discussed--the earlier work tasks were far more acceptable and usable to all groups funded under ESAP in Louisiana--he took no further action on it. He said that Walsh called within 2 or 3 weeks and told him that, unless the school signed the contract with Essential Resources, it would risk having all its Federal funds frozen. He added that, on the basis of this advice, he signed the contract and made the first payment that very day. As best he could recall, this took place in mid-June 1971. Although Walsh said he did not tell the director that Federal funds would be frozen unless the contract with Essential Resources was signed, the director insisted that he did.

Southern University revised its budget to recognize the contract to Essential Resources and forwarded copies of it to Walsh and HEW's regional contracting officer in Dallas, but the project director said that he was not aware formal approval of the contract was necessary. In about January 1972 ESAP/CG notified the school that the contract was not approved (apparently ESAP/CG could not find the school's budget or a copy of the contract in its file). The project director notified Essential Resources that it was terminating

the contract and withholding final payment of \$11,000 because of OE's questions about the propriety of the contract and because the school was not satisfied with the firm's performance.

Scharles acknowledged he was an officer of Essential Resources, but said he did not have any part in the Southern University contract. He added that all of the proceeds received from this contract were used to pay company expenses and that none of the officers received any salary.

Essential Resources, as far as we could determine, did not protest the school's termination of the contract. We formally requested, through an attorney for one of the officers in the firm, access to certain of the firm's financial records relating to the contract, but the firm did not respond to our request.

Savannah State College

The college awarded a technical assistance contract for \$24,759 to National Achievement, Incorporated, Methuen, Massachusetts. However, before any consultative services were provided, the school canceled the contract. The consulting firm's president said that he and Regan, who helped the firm get the contract, were lifelong friends.

A college official said that, after the college sent its proposal to ESAP/CG, Walsh telephoned to say that the proposal was approved. This official added that Walsh also suggested that, because of the proposal's broad scope, the college needed more funds than it was asking for and that, to have a strong project which could later be refunded, the college should hire professionals to evaluate the project. Although he said that Walsh recommended National Achievement as the evaluator, Walsh denied it. Regan, on the other hand, sent a letter to the ESAP/CG Director, recommending the firm to Savannah State. Regan told us that he had also recommended Educational Systems Corporation--a firm which he said he helped to establish.

The college revised its proposed budget and included an amount for a contract for technical assistance. Walsh notified the college on June 23, 1971, that the budget was approved; and HEW's regional grants officer in Atlanta notified

the college by letter of June 30, 1971, that the budget, as well as the contract with National Achievement which the college had negotiated, was approved. Walsh, in a letter dated August 3, 1971, also notified the college that the contract was approved.

College officials said that Regan and a National Achievement representative delivered the contract to the college and that it was signed on June 29, 1971. Regan said that he met with the firm's representative at the college to explain the type of assistance the college needed but that apparently the contract had been mailed to the college. The president of National Achievement confirmed that the contract was mailed and that his representative went to the college to discuss the work to be performed. He said that Regan was there at the time but did not represent the firm.

The president of National Achievement told us that, when he decided to go into business for himself, he asked Regan, who was aware of his professional capabilities, for help and that Regan responded by recommending National Achievement to Savannah State. He said that at his request Regan prepared a sample contract which he used as a model to draft the contract with Savannah State. He also said that Regan was only a friend and did not stand to benefit from the contract.

On September 3, 1971, the ESAP/CG Director advised Savannah State not to honor the contract because of some questionable actions by ESAP/CG consultants. He said Walsh was not authorized to officially approve the contract. Walsh acknowledged that he did not have such authority but maintained that, on the occasions when he signed official correspondence, the ESAP/CG Director was aware of his actions. The college contended that the HEW regional grants officer's approval of June 30, 1971, was sufficient authorization for the college to enter into the contract with National Achievement.

On September 7, 1971, the ESAP/CG Director also notified the HEW regional grants officer that the contract was disapproved. The HEW regional contracts office in Atlanta notified the college on September 9, 1971, that it could not pay National Achievement from grant funds because the contract did not conform with the ESAP general terms and conditions.

The firm claimed expenses of about \$2,000 for preliminary work for which the college offered a settlement of \$1,200. The firm's president told us that he rejected the offer but was unsure of what legal action, if any, he would take to resolve the matter.

Atlanta University

This university hired Scharles Associates, Incorporated, Potomac, Maryland, to provide technical assistance under its training grant. The firm's president, Henry G. Scharles, worked closely with OE officials in arranging for this contract while he was employed with ESAP/CG.

Scharles notified HEW's Atlanta regional office on November 22, 1971, that ESAP/CG had released him on November 19, 1971, and that he would continue to work on ESAP/CG workshops as a consultant with Atlanta University and further that he had revised the university's workplan and budget to include his services. As a consultant to OE, one of Scharles' functions was to develop workshops with the grantees. The revised budget, dated November 23, 1971, included \$12,750 for contracted consultant services. In another revised budget, dated November 30, 1971, this amount was reduced to \$11,300.

The university's project director told us that Scharles informed him of his release from ESAP/CG and of the need to revise the workplan and budget to include the services of a contractor. The director said that this plan seemed logical because the university was too busy on another ESAP project to devote time to workshops. He said that Scharles was most qualified for the job and that ESAP/CG apparently wanted Scharles to continue with the workshops.

Scharles told us that OE's Equal Educational Opportunity Executive Officer and the ESAP/CG Director worked closely with Atlanta University to arrange for it to hire him to insure some continuity in the workshops. He said that he stayed with ESAP/CG for about 2 weeks without pay to work out arrangements for a contract with the university.

Scharles Associates entered into a contract for \$11,300 with Atlanta University on December 20, 1971, to provide consultative services. The university's

project director said that he told HEW regional officials that, in his opinion, the number of days of performance provided for in the contract was too high, but they did not share his concern and took no action. The contract amount was based on 140 days at \$75 a day, plus administrative expenses. He said also that the HEW regional contracting officer had assured him that it was all right to contract with Scharles.

In March 1972 the HEW regional contracting officer in Atlanta notified the university to suspend its contract with Scharles Associates until HEW assessed the need for more workshops. When the suspension was lifted in May 1972, Scharles' contractual obligations were reduced substantially. Scharles was paid about \$7,000 of the \$11,300.

Millersville State College

This college hired Scharles to provide consultative services under its grant. At the time ESAP/CG also retained Scharles on an intermittent basis. In July 1971 the college requested approval from Walsh to amend its ESAP program and budget to provide for a contract for making a movie in lieu of a slide presentation as originally planned. In his reply Walsh advised the college that the request had been "approved by this office and forwarded to the contracts officer." The HEW regional contracting officer in Philadelphia notified the college by letter dated October 1, 1971, that Walsh had no authority to approve the proposed changes, but the college nevertheless proceeded with its project as planned.

Scharles, while employed by ESAP/CG, was also paid by the college for work on this project; but we could not determine if he was paid by both organizations for the same days because the college could not identify all the dates on which Scharles rendered services.

Two college officials most directly involved with the project told us that they were acquainted with Scharles prior to his association with this project; one of them had worked with him in another Federal program and the other was a close friend. The officials also said that they were acquainted with Walsh before he solicited the ESAP proposal

from the college as they had worked with both Scharles and Walsh on another Federal program.

Of the total grant amount of \$27,676, the college received \$20,757; it spent \$14,837 on the project and returned \$5,920 to OE.

REVIEW OF INSTITUTIONAL PROPOSALS

The ESAP/CG employee claimed that the review panel, which evaluated proposals from institutions, was composed solely of Walsh, Scharles, and Regan.

Walsh, who was chairman of the review panel, told us that persons other than the consultants served on the panels. Scharles said that generally five to seven people were on a panel, including some from other agencies. Documentation for determining the makeup of the panels was unavailable. It appears, on the basis of the consultants' statements, that Walsh sat on most panels; Scharles served on some, but could not remember how many; and Regan served on two panels, neither of which considered institutional proposals.

Walsh believed it was imperative that the consultants review as many proposals as possible because the OE program officers were not experienced enough to analyze a proposal adequately. (Lack of experienced program officers, according to the former ESAP/CG Director, was one of the primary reasons for retaining consultants.) Walsh said that the program officers resented the consultants because they felt the consultants had taken over their responsibilities and functions within the program.

Records of review panel meetings were not available in OE files. Walsh, Scharles, and Regan told us that notes, including names of panel members and recommendations, were prepared on panel meetings. The Special Assistant to the HEW Regional Director in San Francisco told us that he served on several panels while employed by OE in Washington and that records were prepared on the meetings. He said that, when he transferred to San Francisco, he left the records in Washington. HEW officials, however, could not locate the records.

Walsh told us that he kept a complete file on budgetary matters relating to grant proposals. He said that, when his employment with OE was terminated, he turned these records over to the ESAP/CG Director. The Director, however, could not locate the records nor could other OE officials.

Walsh said that some proposals probably were funded without normal panel review. He added, however, that none of the proposals would have been funded without a program

officer's recommendation. According to Walsh, the ESAP/CG Director approved a proposal for funding only after a program officer reviewed it and provided comments and recommendations. Walsh said that the panel seldom overrode the program officer's recommendations.

We found no documentary evidence that a panel had reviewed proposals. We believe that prudent management would require that a written record be maintained of the names of review panel members and of the bases for their recommendations on proposals submitted for funding consideration.

Because Walsh was chairman of the panel, he was given a list of people who could serve as panel members. If he did in fact hold panel reviews with only consultant members present, then the consultants unquestionably were in a position to influence selection of proposals to be considered and funded.

All the consultants expressed to us that they felt the ESAP/CG Director retained complete authority and responsibility for program administration. Walsh said that he signed correspondence and approvals for the office, but the ESAP/CG Director was aware of and sanctioned these communiques. The former ESAP/CG Director contended, however, that he did not give consultants any approval authority.

PAYING CONSULTANTS

A consultant employed on a per diem basis, according to HEW's Personnel Manual, may not be paid by two different HEW agencies for services on the same day.

During their tenure with ESAP/CG, Walsh, Scharles, and Regan also served some of the time in the Office of the Secretary, HEW, as consultants to a Migrant Task Force. On several occasions the Office of the Secretary and ESAP/CG paid a consultant full per diem for services to both offices on the same day. These and other payroll errors are summarized below.

--Walsh and Regan in January 1971 consulted with and were paid by both the Office of the Secretary and ESAP/CG for 13 and 10 days, respectively. Both consultants had per diem rates of \$77 in the Office of the Secretary and \$125 in ESAP/CG. Walsh was overpaid

for the 13 days at \$77 a day, or \$1,001, but was underpaid \$77 in June 1971. This resulted in a net overpayment of \$924. Regan was overpaid for 5 days at \$77 a day and for 5 days at \$125 a day, or a total of \$1,010, but was underpaid \$250 in June 1971. This resulted in a net overpayment of \$760. (Walsh told us that he had never submitted claims for the same day to two separate offices. Regan told us that he did not recall having been paid twice by any agency or agencies.)

--Another consultant was overpaid \$600 because the wrong per diem rate was used--\$125 rather than \$100--for 24 days in March and April 1971, but was underpaid \$500 in May 1971. This resulted in a net overpayment of \$100.

These overpayments were determined in consultation with officials of HEW's Division of Central Payroll who sent letters to the three consultants in July 1973 requesting that they return the amounts of the overpayments. None of the consultants had made a refund as of August 27, 1973. The division Director told us that, to prevent a recurrence of this problem, the automated payroll system was adjusted to preclude consultants from being paid by HEW for more than 14 days in a pay period and to automatically reject any payment to a consultant in excess of \$2,000 per pay period.

CONCLUSION

The three consultants, because of either weak or indifferent program management, were in a position where they could and likely did exert considerable, and in some instances questionable, influence in soliciting, reviewing and approving grant applications, and in suggesting that grantees use consultative services.

RECOMMENDATIONS TO THE SECRETARY OF HEW

HEW should direct OE to emphasize to program managers that:

--When consultants are engaged they be used only in the capacity for which they were hired, as required by the Federal Personnel Manual, and not be placed in

positions where they can directly control program administration.

- Records of review panel meetings on ESAP/CG applications submitted for funding consideration should be prepared and maintained so that the bases for the panel's recommendations will be readily available to HEW program managers or to others authorized to review and evaluate the conduct of the program.

AGENCY COMMENTS

HEW commented on the matter discussed in this report by letter dated August 6, 1973. (See app. I.) It concurred with our findings and recommendations and stated that it had taken the following actions since the gravity of the problem became known:

- In February 1972 the ESAP/CG operation was totally restructured to insure that its activities were subject to the same coordination and administrative control as both the school district portion of ESAP and title IV of the Civil Rights Act of 1964. (Title IV of the Civil Rights Act provides professional and financial assistance to help school districts eliminate school segregation.)
- In March 1972 a detailed file on the activities of Walsh, Regan, and Scharles was forwarded to the Department of Justice for possible criminal investigation and prosecution, but Justice returned the file for additional review by HEW. Because of our review, however, HEW's investigation was curtailed to avoid duplicative work.
- In fiscal year 1973 new administrative procedures were established for the Emergency School Aid Act--a much larger successor to ESAP--under which grantees were cautioned, in written guidelines and orientation meetings, against the use of consultants, except where absolutely necessary to their projects. Further, HEW regional offices have maintained detailed records of review panel deliberations on applications received under the new program.

--An HEW-wide study of the use of consultants, field readers, review panelists, and other non-Federal experts was recently undertaken.

In addition, HEW stated that OE program managers would be cautioned, in writing, to use consultants strictly in accordance with applicable provisions of the Federal Personnel Manual.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

Aug. 6 1973

Mr. Morton E. Henig
Associate Director
Manpower and Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Henig:

Thank you for your memorandum of July 16, 1973 transmitting a draft report on the use of consultants in the Community Groups portion of the Emergency School Assistance Program (ESAP). We appreciate the opportunity to comment on this document, which tends to corroborate this Department's own internal findings on the matter of consultant utilization.

(See GAO note.)

I
wish to emphasize that we are in total agreement with the essential findings and basic recommendations of your report.

You should know that this Department has taken the following specific actions since the gravity of the problem became known some 20 months ago:

1. In February 1972 the ESAP Community Groups operation was totally restructured to ensure the Community Groups activities were subject to the same close coordination and administrative control as both the Local Educational Agency portion of ESAP and Title IV of the Civil Rights Act of 1964. This move not only facilitated better administrative direction of the programs, it also encouraged closer cooperation between the different types of grantees.

GAO Note: Comments pertaining to material not contained in the final report have been omitted.

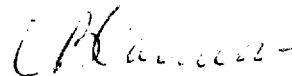
APPENDIX I

Page 2 - Mr. Morton E. Henig

2. On March 8, 1972 we forwarded a detailed file on the activities of Messrs. Walsh, Regan, Scharles, et al to the Department of Justice for possible criminal investigation and prosecution. The file was returned for additional review by HEW. Because of the GAO investigation, however, our investigative efforts were curtailed to avoid duplicative work.
3. In Fiscal Year 1973, new administrative procedures were established for the Emergency School Aid Act (ESAA) -- a much larger successor to ESAP -- which further protected the program against the earlier consultant abuses. Grantees were strongly cautioned, in written guidelines and orientation meetings, against the use of consultants, except where absolutely necessary to their projects. Further, OE Regional Offices have maintained detailed records of review panel deliberations on ESAA applications.
4. We have recently undertaken an exhaustive DHEW-wide study of utilization of consultants, field readers, review panelists and other "non-Federal experts." In addition, we are taking immediate action to implement the specific recommendation of your draft report. Office of Education program managers will be cautioned, in writing, to use consultants strictly in accordance with applicable provisions of the Federal Personnel Manual.
5. Our Division of Central Payroll has taken steps to recover the overpayments to the ESAP consultants and to prevent a recurrence of this problem. As more specific information becomes available on the recovery of funds, we will keep you informed.

If we can be of any further assistance, please let me know.

Sincerely yours,



James B. Cardwell
Assistant Secretary, Comptroller

PRINCIPAL OFFICIALS OF THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
RESPONSIBLE FOR THE ACTIVITIES
DISCUSSED IN THIS REPORT

		<u>Tenure of office</u>	
		<u>From</u>	<u>To</u>
SECRETARY OF HEALTH, EDUCATION, AND WELFARE:			
Caspar W. Weinberger		Feb. 1973	Present
Elliot L. Richardson		June 1970	Jan. 1973
ASSISTANT SECRETARY FOR EDUCATION:			
Sidney P. Marland, Jr.		Nov. 1972	Present
COMMISSIONER OF EDUCATION:			
John R. Ottina		Aug. 1973	Present
John R. Ottina (acting)		Nov. 1972	Aug. 1973
Sidney P. Marland, Jr.		Dec. 1970	Nov. 1972
Terrel H. Bell (acting)		June 1970	Dec. 1970
DEPUTY COMMISSIONER FOR SCHOOL SYSTEMS:			
Duane J. Mattheis		Oct. 1971	Present
Terrel H. Bell		Jan. 1971	Sept. 1971
ASSOCIATE COMMISSIONER, BUREAU OF ELEMENTARY AND SECONDARY EDUCATION:			
Robert R. Wheeler		Jan. 1972	Present
Thomas J. Burns (acting)		June 1971	Jan. 1972
Herman R. Goldberg		Mar. 1971	Aug. 1971
Thomas J. Burns (acting)		July 1970	Feb. 1971

APPENDIX II

		Tenure of office	
		<u>From</u>	<u>To</u>
DIRECTOR, EMERGENCY SCHOOL ASSISTANCE			
PROGRAM/COMMUNITY GROUPS (note a):			
James H. Lockhart		Aug. 1971	Feb. 1972
Melvin L. Johnson		Sept. 1970	Aug. 1971

^aIn February 1972 the community groups staff was absorbed into a Task Force (division) of Equal Educational Opportunity which was headed by Herman R. Goldberg, with George R. Rhodes acting as his deputy. In November 1972 the Bureau of Equal Educational Opportunity succeeded the Task Force with Mr. Goldberg becoming the Associate Commissioner of the Bureau and Mr. Rhodes the Deputy Associate Commissioner (Operations).